



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 653**

**IN THE MATTER  
OF  
FRANCIS P. CALLAHAN**

## **DISPOSITION AGREEMENT**

This Disposition Agreement is entered into between the State Ethics Commission and Francis P. Callahan pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On December 13, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Callahan. The Commission has concluded its inquiry and, on September 12, 2001, found reasonable cause to believe that Callahan violated G.L. c. 268A, §§17 and 19.

The Commission and Callahan now agree to the following findings of fact and conclusions of law:

1. Callahan is one of three Ayer Commissioners of Trust Funds. He is also employed by New England Financial as a financial representative.
2. The Ayer Commissioners of Trust Funds are responsible for investing the town's 14 scholarship trust funds, and awarding scholarships from those funds. As of Summer 1999, the funds overseen by the Commission totaled approximately \$320,000.
3. At the August 20, 1999 meeting of the Commission of Trust Funds, Callahan volunteered to explore how the Commission could achieve a higher rate of return on its investments. (The minutes of the August 20 meeting state that "Mr. Callahan will meet with the treasurer to provide guidance on the reinvestment of" a \$100,000 certificate of deposit. No formal vote was taken.) At the time, certificates of deposit – the investment vehicle usually employed by the Commission – were returning approximately five percent per annum. Most securities were earning a much higher return.
4. Four days later, the town treasurer transmitted materials to each of the three commissioners, including Callahan. Those materials included a copy of §19 of the conflict of interest law, which bars municipal employees from participating in particular matters in which they and/or their employers have a financial interest.
5. At some time after the August 20, 1999 meeting, but before August 30, 1999, Callahan advised his colleagues on the Trust Funds Commission that the New England Securities Growth and Income Fund would be an appropriate investment vehicle for the

Commission. On August 30, 1999, Callahan and the other two commissioners co-signed a letter to the town treasurer instructing him to deposit \$90,000 of the trust funds' money in the New England Securities Growth and Income Fund. The treasurer did so.

6. The New England Securities Growth and Income Fund is one of the mutual funds offered by New England Securities, the licensed broker/dealer of securities for Callahan's employer, New England Financial. The Trust Funds Commission's New England Securities account application names Callahan as the representative for New England Securities.

7. The up-front charge for the investment levied by Callahan's employer was 5.75 percent of the total value of the investment, or \$5,175. Of this amount, \$1,800 was paid to Callahan as a commission on the sale.

8. In or about late November 1999, the Ayer Board of Selectmen raised concerns regarding the investment. On or about December 16, 1999, at a meeting of the Trust Funds Commissioners, Callahan recommended to his fellow commissioners that they "cancel the investment in question...and start over." His fellow commissioners declined Callahan's invitation, instead affirming their initial investment in a December 18, 1999 letter to the town treasurer. (Callahan was not a signatory to the letter.)

9. On January 15, 2000, the Trust Funds Commission, with Callahan abstaining, voted to shift approximately half of the value of that investment to a New England Securities money market fund, a more conservative investment vehicle. The minutes of the January 15, 2000 meeting also note that "Mr. Callahan advised that he will donate his commission." On or about February 8, 2000, Callahan's \$1,800 commission was reinvested in the mutual fund.

### **Chapter 268A, §17**

10. Section 17(a) of G.L. c. 268A prohibits a municipal employee from, except as otherwise provided for by law for the proper discharge of official duties, directly or indirectly receiving or requesting compensation from anyone other than their city, town or municipal agency in relation to a particular matter in which the same city or town is a party or has a direct and substantial interest.

11. Section 17(c) of G.L. c. 268A prohibits a municipal employee from, inter alia, acting as an agent for anyone in connection with any particular matter in which the municipality is a party or has a direct and substantial interest, except as otherwise provided for by law for the proper discharge of official duties.

12. As a Trust Funds Commissioner, Callahan was, in August 1999, a municipal employee as that term is defined in G.L. c. 268A, §1.

13. The decision to invest funds in the New England Securities Growth and Income Fund was a particular matter.

14. The Trust Funds Commission had a direct and substantial interest in the matter; it was entrusted with protecting the trust funds' corpus, and the number of scholarships that it could award hinged in large part on the value of the funds.

15. Callahan received an \$1,800 commission from his employer for the town's investment in the New England Securities Growth and Income fund. (He later returned the Commission.)

16. Callahan's receipt of this compensation was not authorized by law for the performance of his official duties

17. By receiving compensation from his employer in relation to a particular matter in which the Trust Funds Commission had a direct and substantial interest, Callahan violated §17(a).<sup>1</sup>

18. At the time he recommended the investment as a board member, Callahan was also acting as an agent for his employer regarding the investment. Indeed, Callahan was, in effect, acting in a dual capacity when he made the recommendation. He was both a private agent and a public employee.

19. Callahan's actions as his employer's agent were not authorized by law for the performance of his official duties.

20. By acting as agent for his employer in relation to a particular matter in which the Trust Funds Commission had a direct and substantial interest, Callahan violated §17(c).

#### **Chapter 268A, §19**

21. Section 19 of G.L. c. 268A prohibits municipal employees from participating in their official capacity in particular matters in which, to their knowledge, they or their employer have a financial interest.

22. As already noted, Callahan was a municipal employee and the decision to invest funds in the New England Securities Growth and Income Fund was a particular matter.

23. By advising the Trust Funds Commission to make that investment, and then joining with his fellow commissioners to execute a letter to the town treasurer directing him to make the investment, Callahan participated, in his official capacity, in this particular matter.

24. Callahan and his employer, New England Financial, each had a financial interest in the particular matter. Callahan's employer earned \$5,175 in the transaction, of which \$1,800 was paid to Callahan as a commission.

25. Callahan knew of these financial interests when he recommended the investment and signed the letter to the treasurer directing him to make the investment.

26. Therefore, by participating in two decisions leading to the purchase by the Trust Funds Commission of an investment vehicle marketed by his employer, which in turn led to his collection of an \$1,800 commission, and his employer's receipt of a fee, Callahan participated in a particular matter in which, to his knowledge, he and his employer had a financial interest, thereby violating §19.

In view of the foregoing violation of G.L. c. 268A by Callahan, the Commission has determined that the public interest would be served by the disposition of this matter without

further enforcement proceedings, on the basis of the following terms and conditions agreed to by Callahan:

- (1) that Callahan pay to the Commission the sum of \$2,000.00 as a civil penalty for violating G.L. c. 268A, §17 and §19; and
- (2) that Callahan waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: January 7, 2002**

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<sup>1</sup> Callahan's receipt of a commission derived from town funds under a contract between his employer and the town also violated §20. That section bars municipal employees from having a financial interest in municipal contracts. The Commission, in its discretion, elected to impose a penalty only for Callahan's §17 and §19 violations.